

### **REMARKS**

Claims 1 through 7, 10 through 12, and 15 through 21 are now pending in the application. Claims 3 through 5 and 19 have been withdrawn from consideration, Claims 8, 9, 13 and 14 have been canceled, and Claims 1, 10, 15 and 20 have been amended. Bases for the amendments can be found throughout the application, drawings and claims as originally filed and as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **CLAIM OBJECTIONS**

The Examiner has objected to Claim 15 for various informalities. Applicant has amended the claims in a manner consistent with the Examiner's suggestions. Accordingly, Applicant submits that the objection to the claims has been rendered moot.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1, 2, 6, 16 through 18 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by WO 03/096791 A1 to Gearing et al. This rejection is respectfully traversed.

Regarding Claim 1, Applicant notes that the Gearing et al. reference does not teach or suggest a mulch shield having an upper flange that extends radially outwardly and upwardly and through which a slit is formed. Accordingly, Applicant respectfully submits that the Examiner reconsider and withdraw the rejection of Claim 1 under 35 U.S.C. §102(b).

Applicant notes that Claims 2, 6 and 16 through 18 depend from Claim 1 and should be in condition for the reasons set forth, above.

Regarding Claim 20, Applicant notes that the Gearing et al. reference does not teach or suggest a mulch shield wherein the body may be released after being fitted about a tree trunk to coil about the tree trunk and close. In this regard, Gearing et al. does not teach or suggest a self-closing characteristic in conjunction with the disclosed shelter. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 20 under 35 U.S.C. §102(b).

#### **REJECTION UNDER 35 U.S.C. § 103**

Claims 7 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 03/096791 A1 to Gearing et al. in view of RU 2118487 C1 to Gubin et al. This rejection is respectfully traversed.

Applicant respectfully submits that the Examiner has not set forth a prima facie case of obviousness. More specifically, Applicant submits that there is no teaching or suggestion to combine the references, and that the combination of references does not teach or suggest each element of the claims.

Regarding the teaching or suggestion for combining the references, Applicant notes that the Gearing et al. shelter is formed of a sheet material that is formed of a relatively flexible material, such as MYLAR. Applicant further notes that the Gubin et al. reference appears to disclose a shelter having cleats formed on its bottom surface. The shelter of the Gubin et al. reference appears to be of sufficient rigidity that the cleats can be driven into the ground. Applicant respectfully submits that the proposed modification would not yield a functional cleat (i.e., it would be too flexible) and moreover that addition of cleats would be contrary to the stated goal of the Gearing et al. reference - namely, to provide a stable shelter ... that is convenient to erect, store and transport.

Even if the Gearing et al. reference could be combined with the Gubin et al. reference, it would still not produce the claimed mulch shield. In this regard, the combination lacks an upper flange that extends radially outwardly and upwardly and through which a slit is formed (as recited in Claims 1 and 21). Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 7 and 21 under 35 U.S.C. §103(a).

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 03/096791 A1 to Gearing et al. in view of U.S. Patent No. 5,809,690 to Due et al. This rejection is respectfully traversed.

Applicant notes that neither Gearing et al. or Due et al. teach or suggest an upper flange that extends radially outwardly and upwardly. The Examiner has stated that the flaps (35) of the Due et al. reference constitute an upper flange that extends radially outwardly and upwardly. Applicant notes that the Due et al. reference describes the flaps (35) as being “turned down”. Moreover, the term “flange” means a projecting collar, not a down-turned flap. Accordingly, Applicant submits that the Examiner has not presented a prima facie case of obviousness and respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 10 and 11 under 35 U.S.C. §103(a).

Claims 12 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 03/096791 A1 to Gearing et al. in view of U.S. Patent No. 4,829,707 to Koffler et al. This rejection is respectfully traversed.

Applicant notes that neither Gearing et al. nor Koffler et al. teach or suggest an upper flange that extends upwardly and radially outwardly through which a slit is formed. Accordingly, Applicant submits that the Examiner has not presented a prima facie case of

obviousness and respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 12 and 15 under 35 U.S.C. §103(a).

**CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael D. Zalobsky', written over a horizontal line.

By:

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Dated: October 31, 2005

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